

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COLE BENJAMIN HOOKER,

Defendant-Appellant.

UNPUBLISHED

December 28, 2006

No. 263625

Grand Traverse Circuit Court

LC No. 04-009631-FC

Before: Borrello, P.J., and Neff and Cooper, JJ.

COOPER, J. (*concurring*)

While I agree with the majority's conclusion and most of its analysis, because I find I would address one argument differently, I write separately to do so. In Part I-A, the majority finds no plain error in the prosecutor's statement to the jury to "keep in mind that in order to find the Defendant not guilty you have to decide that you don't believe . . . [the complainant]." The majority concludes that this statement did not "implicitly suggest[] that the burden of proof was on defendant." I disagree. I think that is exactly what the prosecutor did. What the prosecutor did not do is explicitly state that the burden of proof transferred to defendant. Had the prosecutor made that point explicitly rather than by implication, the outcome here might be different. However, I agree with the majority that where, as here, the complainant and the defendant's testimony are so directly contradictory that it is only possible to believe one, then the logical inference for the jury to make is that the other is lying. For that reason, although I find it to be poor form by the prosecutor to imply to the jury that the burden of proof ought fall on defendant, I cannot find that it was reversible error.

/s/ Jessica R. Cooper